TEO SOH LUNG

v.

THE MINISTER OF HOME AFFAIRS & ORS.

HIGH COURT, SINGAPORE
FA CHUA J
[CIVIL APPEAL NO. 30 OF 1989]
22 NOVEMBER 1991

CIVIL PROCEDURE: *Bill of costs for getting-up - Distinction between issues of law and issues which relate to the facts or issues which bear on the facts - Order of the Court of Appeal.*

The appellant was detained in May 1987 under the Internal Security Act (ISA). Her application for *habeas corpus* was dismissed by the High Court. She appealed to the Court of Appeal. On 8 December 1988, her appeal was allowed on the ground that there was no sufficient evidence of the President's satisfaction as required under s. 8(1) of the ISA. An order for her immediate release was made.

She was then served with a new detention order dated the 8 December 1988 and re-arrested. Sometime in January 1989, the Government introduced two measures in Parliament which *inter alia* amended the Constitution of Singapore and added new provisions to the ISA.

On the aftermath of such Legislative amendments, the appellant's application for *habeas corpus* was dismissed by the High Court. The appellant appealed to the Court of Appeal.

The matter before the Court is the proper interpretation of the order of the Court of Appeal as to costs as set out in the said order.

It was submitted that the learned Senior Assistant Registrar's interpretation of the order is erroneous.

Held:

[1] The order clearly stated that the costs be limited to the "issues" and not "issue" which bear on the facts as argued before the Court of Appeal. The word "issues" must include legal and factual issues which have a bearing on the facts as argued before the Court of Appeal and which are the nine issues enumerated by the Senior Assistant Registrar.

[Senior Assistant Registrar's decision affirmed.]

Legislation referred to:
Internal Security Act [Sing], s. 8(1)

For the appellant - Giam Chin Toon (Patrick Seong & Yap Su Ling with him)
For the respondent - Soh Tze Bian

JUDGMENT

FA Chua J:

This is an application to a Judge for a review of the order of the Senior Assistant Registrar (SAR) on review dated 23 May 1991, in respect of item 38 of the Bill of Costs for getting-up. Item 38 was drawn at $50,000 and was allowed at taxation at $40,000 and on review at $30,000.

The factual background is briefly as follows:

The appellant was detained in May 1987 under the Internal Security Act (lSA) on the grounds that she had:

> acted in a manner prejudicial to the security of Singapore by being involved, between 1984 and May 1987, in a Marxist conspiracy to subvert the existing social and political system in Singapore, using communist united front tactics with a view to establishing a Marxist state.

Her application for *habeas corpus* was dismissed by the High Court. She appealed to the Court of Appeal. On 8 December 1988, her appeal was allowed on the ground that there was no sufficient evidence of the President's satisfaction as required under s. 8(1) of the ISA. An order for her immediate release was made. She was then served with a new detention order dated 8 December 1988 and re-arrested.

In January 1989, the Government introduced two measures in Parliament:

(a) The Constitution of the Republic of Singapore (Amendment) Act 1989 (No. 1 of 1989) which was passed by Parliament and came into operation on 27 January 1989.

(b) The internal Security (Amendment) Act 1989 (No. 2 of 1989) which was passed by Parliament and came into operation on 30 January 1989.

Act No. 1 of 1989 amended Article 149 of the Constitution. Act No. 2 of 1989 added 4 new provisions to the ISA.

The appellant's application for *habeas corpus* was dismissed by the High Court. The appellant appealed to the Court of Appeal. The appeal was dismissed on 3 April 1990, and the following order was made:

> It is ordered that the appeal be and is hereby dismissed with **costs limited to the issues which bear on the facts as argued before the Court of Appeal.**

What is in issue in this application is the proper interpretation of the order of the Court of Appeal as to costs set out above (the order).

The SAR's interpretation of the order is set out at p. 8 of the grounds of decision:

> In my view, the respondents are entitled to costs of all legal and factual issues dealt with in the Court of Appeal's judgment.

The SAR at pp. 5 and 6 of the grounds of decision enumerated nine issues which, in his view, have a bearing on the facts as argued before the Court of Appeal. Costs was allowed on all these nine issues.

Counsel for the appellant submits that the SAR's interpretation of the order is erroneous as a closer examination of the grounds of decision reveals that the SAR was inconsistent in his interpretation. Counsel's argument is this:

The SAR has agreed with the submission of Counsel for the appellant that "the issues which bear on the facts" cannot embrace all the issues canvassed before the Court of Appeal. He has also said that Counsel for the respondents has rightly conceded that costs could not be claimed on the constitutional and administrative law arguments of whether **Lee Mau Seng** precluded judicial review.

It is clear that the SAR accepted that the Court of Appeal intended to place some form of limitation on the order as to costs.

However, in deciding to award costs for "all legal and factual issues dealt with in the Court of Appeal's judgment" on the proper limitation of costs submitted by Counsel for the appellant and by Counsel for the respondents to which he has agreed.

Counsel for the appellant says that the thinking of the Court of Appeal is reflected in the last two paras of the judgment ([1990] 2 MLJ 129 at p. 139):

> Accordingly for the reasons given above, Lord Alexander's submission on the law is not available to him on the facts. The appeal must therefore fan on the facts. It is not necessary for us to decide whether Lee Mau Seng would or would not have precluded judicial review if the factual basis in this case had been what Lord Alexander had contended it was.
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> In the circumstances, it is also unnecessary for us to consider whether s. 8B(2) of the ISA has the effect of precluding the Court from reviewing a detention order which is demonstrably made for a purpose(s) other than national security, or whether, in the alternative the amendments to s. 8 of the ISA are outside the scope of the legislative powers conferred by the amended article 149 of the constitution or whether, in the further alternative, the purported amendments to the constitution are invalid as violating the basic structure of the constitution.

Counsel says that clearly the Court of Appeal intended to make a distinction between issues of law as submitted by Counsel and issues which relate to the facts or issues which bear on the facts.

Counsel says that in the judgement at p. 136 G1 the Court of Appeal demonstrated that all arguments before the Court turned on the factual issue of whether the appellant had been re-detained on grounds of national security. If the appellant had in fact been re-detained on national security grounds, then all other issues argued became irrelevant.

Counsel submits that the only issue which bears on the facts is the issue relating to whether the appellant had in fact been re-detained on the grounds of national security and the getting-up item should only be confined to the issue and for this point alone the award cannot be $30,000.

Finally Counsel for the appellant submits that the SAR has erred in his decision to take into account four of the nine issues which he enumerated at pp. 5 and 6 of the grounds of decision, which the Court of Appeal clearly indicated he should omit in the evaluation of costs.

I am of the view that the SAR's views and interpretation of the order were proper and correct. The restrictive interpretation of the order put forward by Counsel for the appellant overlooks and ignores the issues of law and fact dealt with by the Court of Appeal in its judgment at pp. 135-139 of the report and which the respondents should be allowed to claim. These issues which have a bearing on the facts and had been argued before the Court of Appeal are the nine issues enumerated by the SAR at pp. 5 and 6 of the grounds of decision.

The order clearly stated that the costs be limited to the "issues" and not "issue" which bear on the facts as argued before the Court of Appeal. The word "issues" must include legal and factual issues which have a bearing on the facts as argued before the Court of Appeal and which are the nine issues enumerated by the SAR.

I am of the view that the amount of $30,000 awarded by the SAR for the getting-up item is fair and reasonable.

There is no reason for me to interfere with the SAR's decision.

Also found at [1992] 2 CLJ 943